

Rule 5. Confidentiality

(a) Before Formal Complaint and Response. Except as otherwise provided in this rule or Rule 16(f), all proceedings shall be confidential until the Formal Complaint or Formal Statement of Disability Proceeding and response, if any, have been filed with the Supreme Court pursuant to Rule 8. The board shall establish procedures for enforcing the confidentiality provided by this rule.

(1) If at any time the board issues a public reprimand, such action shall be a matter of public record.

(2) If the board issues a private admonition or a dismissal with a letter of caution or enters into a deferred disposition agreement, this action may be disclosed to the chief justice, chief judge and/or district administrator of the judicial district in which the judge sits. Such disclosure is at the discretion of the board and shall be for the purpose of monitoring future conduct of the judge and for assistance to the judge in modifying the judge's conduct. To the extent that any information is disclosed by the board pursuant to this provision, the chief justice, chief judge and/or district administrator shall maintain the confidentiality of the information in accordance with Rule 5.

(3) Information may be disclosed between the Board on Judicial Standards or executive secretary and the Office of Lawyers Professional Responsibility in furtherance of their duties to investigate and consider conduct that occurred prior to a judge assuming judicial office.

(b) After Formal Complaint or Formal Statement of Disability Proceeding and Response. Upon the filing of the Formal Complaint or Formal Statement of Disability Proceeding and written response, if any, with the Supreme Court, except as provided in Rule 16(f) the proceedings become public, but the files of the board, other than the Formal Complaint or Formal Statement of Disability Proceeding and the written response thereto, shall remain confidential unless and until any documents, statements, depositions or other evidence in the files of the board are introduced or used in a public hearing as provided in Rule 10.

(c) Notice to Complainant. The board shall promptly notify the complainant, if any, of the board's action and give a brief explanation of the action. The notice shall disclose the names of the board members who did not participate in the action. If the board's action is issuance of a Formal Complaint or Formal Statement of Disability Proceeding, the board shall notify the complainant of the issuance of the Formal Complaint or Formal Statement of Disability Proceeding, the hearing panel's action, and the action, if any, of the Supreme Court.

(d) Work Product. The work product of the executive secretary and board counsel, and the records of the board's deliberations, shall not be disclosed.

(e) Public Statements by Board.

(1) In any case in which the subject matter becomes public through independent sources or through a waiver of confidentiality by the judge, the board may issue statements as it deems appropriate in order to confirm the pendency of the investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the judge to a fair hearing without prejudgment and to state that the judge denies or admits the allegations. The statement shall be first submitted to the judge involved for comments and criticisms prior to its release, but the board in its discretion may release the statement as originally prepared.

(2) The board may disclose that a matter is not being investigated. If an inquiry was initiated as a result of notoriety or because of conduct that is a matter of public record, or if a complaint filed with the board has become publicly known, information concerning the lack of cause to proceed may be released by the board. If the inquiry was initiated after the statutory filing period for judicial

office has opened, the board may issue a public statement as deemed appropriate pursuant to Rule 6(e).

(3) The board may make such disclosures as it deems appropriate whenever the board has determined that there is a need to notify another person or agency in order to protect the public or the administration of justice.

(f) Disclosure in Event of Application to the Governor for Retirement. The board may disclose to the governor information about the existence, status, and nature of pending complaints, complaints resulting in action of the board pursuant to Rule 6(f)(5), and complaints resulting in a private warning or imposition of conditions prior to August 1, 2009, regarding judges who have applied to the governor for disability retirement as provided in Rule 18.

(g) Disclosure for Judicial Selection, Appointment, Election, or Assignment. When any state or federal agency seeks material in connection with the selection or appointment of judges or the assignment of a retired judge to judicial duties, the board may release information from its files only: (1) if the judge in question agrees to such dissemination; and (2) if the file reflects a pending complaint, action of the board pursuant to Rule 6(f)(5), or a private warning or imposition of conditions prior to August 1, 2009. If the board action was taken on or after January 1, 1996, such information may also be released if a judge is involved in a contested election, subject to the same restrictions.

(h) Disclosure to Judge. The judge who is the subject of a complaint shall, upon request, have access to the file relative to the complaint at any stage of the proceedings, including witness statements and notes of witness interviews. The following shall not be required to be disclosed: (1) communications between the executive secretary and board members and/or board counsel and communications between board members in furtherance of their duties and (2) the work product of the executive secretary, board members, and board counsel, including their notes, and the records of the board's and hearing panel's deliberations.

(i) Waiver of Confidentiality. A respondent judge may waive confidentiality at any time.

(j) Senior Judges. If the board receives credible information that a senior judge has engaged in conduct in violation of the Code of Judicial Conduct, the board may notify the chief justice, a chief judge, and the state court administrator.

(k) Mentors. If the board appoints a mentor for the judge, the board may disclose information to the mentor and may disclose information concerning the mentorship to the chief justice and a chief judge. If a mentor is appointed in connection with a judge's public discipline, the board may publicly disclose the identity of the mentor.

(Amended effective January 1, 1996; amended effective March 30, 1999; amended effective July 1, 2009; amended effective July 1, 2016.)